

(1) When the biorefinery produces a biobased product and, if applicable, by-product that has an established BTU content from a recognized Federal source, majority biofuel production will be based on BTU content of the advanced biofuel, the biobased product, and, if applicable, the byproduct, or

(2) When the biorefinery produces a biobased product or, if applicable, by-product that does not have an established BTU content, then majority biofuel production will be based on output volume, using parameters announced by the Agency in periodic Notices in the FEDERAL REGISTER, of the advanced biofuel, the biobased product, and, if applicable, the byproduct.

(e) An advanced biofuel that is converted to another form of energy for sale will still be considered an advanced biofuel.

(f) The project must provide funds (e.g., cash, subordinate financing, non-federal grant) of not less than 20 percent of eligible project costs. All projects must meet the equity requirements specified in § 4279.234(c)(1).

(g) The Agency will consider refinancing only under either of the two conditions specified in paragraphs (g)(1) and (g)(2) of this section.

(1) Permanent financing used to refinance interim construction financing of the proposed project only if the application for the guaranteed loan under this subpart was approved prior to closing the interim loan for the construction of the facility.

(2) Refinancing that is no more than 20 percent of the loan for which the Agency is guaranteeing and the purpose of the refinance is to enable the Agency to establish a first lien position with respect to pre-existing collateral subject to a pre-existing lien and the refinancing would be in the best financial interests of the Federal Government.

#### § 4279.229 Guaranteed loan funding.

Instead of the provisions found in § 4279.119, the provisions of this section apply to loans guaranteed under this subpart.

(a) In administering this program's budgetary authority each fiscal year, the Agency will allocate up to, but no more, than 50 percent of its budgetary

authority to fund applications received by the end of the first application window, including those carried over from the previous application period. Any funds not obligated to support applications submitted by the end of the first application window will be available to support applications received by the end of the second window, including those carried over from the previous application period. The Agency, therefore, will have a minimum of 50 percent of each fiscal year's budgetary authority for this program available to support applications received by the end of the second application window.

(b) The amount of a loan guaranteed for a project under this subpart will not exceed 80 percent of total eligible project costs. Total Federal participation will not exceed 80 percent of total eligible project costs. The borrower needs to provide the remaining 20 percent from other non-Federal sources to complete the project. Eligible project costs are specified in paragraph (e) of this section.

(c) The maximum principal amount of a loan guaranteed under this subpart is \$250 million to one borrower; there is no minimum amount. If an eligible borrower receives other direct Federal funding (*i.e.*, direct loans and grants) for a project, the amount of the loan that the Agency will guarantee under this subpart must be reduced by the same amount of the other direct Federal funding that the eligible borrower received for the project. For example, an eligible borrower is applying for a loan guarantee on a \$1 million project. The borrower provides the minimum matching requirement of 20 percent, or \$200,000. This leaves \$800,000 in other funding needed to implement the project. If the borrower receives no other direct Federal funding for this project and requests a guarantee for the \$800,000, the Agency will consider a guarantee on the \$800,000. However, if this borrower receives \$100,000 in other direct Federal funding for this project, the Agency will only consider a guarantee on \$700,000.

(d) The maximum guarantee on the principal and interest due on a loan guaranteed under this subpart will be determined as specified in paragraphs (d)(1) through (d)(4) of this section.

**§ 4279.230**

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(1) If the loan amount is equal to or less than \$125 million, 80 percent for the entire loan amount unless all of the conditions specified in paragraphs (d)(1)(i) through (d)(1)(iii) of this section are met, in which case 90 percent for the entire loan amount.

(i) Equity of 40 percent, excluding qualified intellectual property;

(ii) Feedstock and off-take contracts of at least 1 year in duration; and

(iii) Collateral coverage ratio, total discounted collateral value divided by total loan request, exceeding 1.5 to 1.

(2) If the loan amount is more than \$125 million and less than \$150 million, 80 percent for the entire loan amount.

(3) If the loan amount is equal to or more than \$150 million but less than \$200 million, 70 percent on the entire loan amount.

(4) If the loan amount is \$200 million up to and including \$250 million, 60 percent on the entire loan amount.

(e) Eligible project costs are only those costs associated with the items listed in paragraphs (e)(1) through (e)(7) of this section, as long as the items are an integral and necessary part of the total project, as determined by the Agency.

(1) Purchase and installation of equipment (new, refurbished, or re-manufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Construction or retrofitting.

(3) Permit and license fees.

(4) Working capital.

(5) Land acquisition.

(6) Cost of financing, excluding guarantee and renewal fees.

(7) Any other item identified by the Agency in a notice published in the FEDERAL REGISTER.

(f) Loans made with the proceeds of any obligation the interest on which is excludable from income under the Internal Revenue Code are ineligible. Funds generated through the issuance of tax-exempt obligations cannot be used to purchase the guaranteed portion of any Agency guaranteed loan and an Agency guaranteed loan cannot serve as collateral for a tax-exempt issue. The Agency may guarantee a loan with respect to a project at a facility that has received, or will receive, tax-exempt financing only when the

guaranteed loan funds are used to finance a project that is separate and distinct from the activities at the facility that have been or will be financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

**§ 4279.230 [Reserved]**

**§ 4279.231 Interest rates.**

The provisions found in § 4279.125 apply to loans guaranteed under this subpart, except as provided in paragraphs (a) through (c) of this section. Lenders are encouraged to pass interest-rate savings realized through the secondary market on to the borrower.

(a) The rate on the unguaranteed portion of the loan shall not exceed the rate on the guaranteed portion of the loan by more than 500 basis points;

(b) Variable rate loans will not provide for negative amortization nor will they give the borrower the ability to choose its payment among various options.

(c) Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term, as provided in § 4279.232(a).

**§ 4279.232 Terms of loan.**

Instead of the provisions found in § 4279.126, the provisions of this section apply to loans guaranteed under this subpart, except as provided in § 4279.232(e).

(a) The repayment term for a loan under this subpart will be for a maximum period of 20 years or the useful life of the project, as determined by the lender and confirmed by the Agency, whichever is less. The length of the loan term shall be the same for both the guaranteed and unguaranteed portions of the loan.

(b) Guarantees shall be provided only after consideration is given to the borrower's overall credit quality and to the terms and conditions of any applicable subsidies, tax credits, and other such incentives.

(c) All loans guaranteed under this subpart must be financially sound and feasible, with reasonable assurance of repayment.